

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amended After Comments)

401 KAR 5:002. Definitions for 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. [Parts] 35, 116, 122, 130, 131, 133, 136, 141, 401-471, 15 U.S.C. 2601-2629 [et seq.], 33 U.S.C. 1251-1387 [et seq.], 42 U.S.C. 6901-7000 [et seq.], 7401-7671q [et seq.], 9601, 11023, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.10-110, 224.16-050, 224.16-060, 224.70-110, 40 C.F.R. [Parts] 116, 130, 131, 136, 401-471, 15 U.S.C. 2601-2629 [et seq.], 33 U.S.C. 1251-1387, [et seq.]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the [Environmental and Public Protection] cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. [This administrative regulation and 401 KAR 5:026, 401 KAR 5:029, 401 KAR 5:030, and 401 KAR 5:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. 401 KAR Chapter 5 establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the commonwealth.] This administrative regulation

1 establishes definitions for terms ~~[and acronyms, abbreviations, and symbols]~~ used in 401 KAR
2 Chapter 5. ~~[, relating to the issuance of those permits. If applicable, these definitions are the same~~
3 ~~as definitions used for the federal National Pollutant Discharge Elimination System program in 40~~
4 ~~C.F.R. Parts 116, 136, 401—471, and the planning requirements in 40 C.F.R. Part 130.]~~ These
5 definitions are not ~~[There are no definitions that are]~~ more stringent than the federal counterparts
6 ~~[federal requirements]~~.

7 Section 1. Definitions. (1)~~["Act" means the Federal Water Pollution Control Act, also known~~
8 ~~as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.~~

9 ~~(2)]~~ "Activity" means, in 401 KAR 5:050 through 401 KAR 5:080 ~~[for purposes of 401 KAR~~
10 ~~5:050 to 401 KAR 5:080]~~ and if used in conjunction with "facility" ~~[facility]~~, a ~~[any]~~ KPDES
11 point source, or ~~[any]~~ other activity, including land or related appurtenances ~~[thereto]~~, that is
12 subject to regulation under the KPDES program.

13 ~~[(3)]~~ "Acute chronic ratio" means ~~the ratio of the acute toxicity, expressed as an LC50, of an~~
14 ~~effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic~~
15 ~~toxicity from acute toxicity data.~~

16 ~~(4)~~ "Acute criteria" means ~~the highest instream concentration of a toxic substance or an~~
17 ~~effluent to which an organism can be exposed for a brief period of time without causing an~~
18 ~~unacceptable harmful effect.~~

19 ~~(5)~~ "Acute toxicity" means ~~lethality or other harmful effect sustained by either an indigenous~~
20 ~~aquatic organism or a representative indicator organism used in a toxicity test, due to a short-~~
21 ~~term exposure, of ninety six (96) hours or less, to a specific toxic substance or mixture of~~
22 ~~toxic substances.~~

23 ~~(6)~~ "Acute toxicity unit" means ~~the reciprocal of the effluent dilution that causes the acute~~

effect, or LC50, by the end of the acute exposure period.

(7) (2) "Administrator" **is defined by 40 C.F.R. 122.2, effective July 1, 2008.** ~~[means the administrator of the U.S. [United States] Environmental Protection Agency, or the administrator's authorized representative.]~~

[(8)"Adversely affect" or "adversely change" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution-tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.]

(3) [(9)] "Agricultural wastes handling system" means a ~~[no-discharge]~~ structure or equipment that conveys, stores, or treats manure from an animal feeding operation prior to land application.

(4) [(10)] "Alternative effluent limitations" **is defined by 40 C.F.R. 125.71(a), effective July 1, 2008.** ~~[means all effluent limitations or standards of performance for the control of the thermal component of a [any] discharge that is [which are] established under 401 KAR 5:055.]~~

(5) [(11)] "Animal feeding operation" or "AFO" means ~~[, for purposes of 401 KAR 5:005 and 401 KAR 5:050 to 401 KAR 5:080,]~~ a lot or facility, other than an aquatic animal production facility, that meets one (1) of the following descriptions ~~[where the following conditions are met]:~~

(a)1. "Large animal feeding operation" as defined in subsection (71) of this section; or

2. "Medium animal feeding operation" as defined in subsection (83) of this section; and

(b) If:

1.a. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in a ~~[any]~~ twelve (12) month period;

and

b. [2.] Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

2. [(b)] Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation **because** **if** they adjoin each other or if they use a common area or system for the disposal of wastes.

[(12)] "~~Animal unit~~" means, for purposes of 401 KAR 5:005 and 401 KAR 5:050 to 401 KAR 5:080, ~~the unit of measurement for any animal feeding operation, calculated according to the following equation:~~

$$\text{Animal Unit} = (N1 \times 1.0) + (N2 \times 1.4) + (N3 \times 0.4) + (N4 \times 0.1) + (N5 \times 2.0)$$

Where:

N1 = ~~Number of slaughter and feeder cattle;~~

N2 = ~~Number of mature dairy cattle;~~

N3 = ~~Number of swine weighing over twenty five (25) kg;~~

N4 = ~~Number of sheep; and~~

N5 = ~~Number of horses.]~~

(6) [(13)] "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject pursuant to ~~[under]~~ KRS Chapter 224[5] and 401 KAR Chapters [Chapter] 4 through 11 ~~[administrative regulations promulgated pursuant thereto]~~, including effluent limitations, water quality standards, standards of performance, or ~~[and]~~ toxic effluent standards.

(7) [(14)] "Application" means the document submitted by an applicant to the cabinet that ~~[which]~~ provides information used by the cabinet in the issuance of a permit or approval. ~~[The~~

1 application may have several different forms, depending on the type of permit which is
2 requested. The specific forms are required in the applicable administrative regulation.]

3 (8) [(15)] "Approved POTW pretreatment program", "POTW pretreatment program",
4 "pretreatment program", or "program" means a program administered by a POTW that meets the
5 criteria established in 401 KAR 5:057 and that [which] has been approved by the cabinet.

6 (9) [(16)] "Aquaculture project" **is defined by 40 C.F.R. 122.25(b)(1), effective July 1,**
7 **2008. [means a defined managed water area that [which] uses discharges of pollutants into**
8 **that designated area for the maintenance or production of harvestable freshwater plants or**
9 **[and] animals.]**

10 [(17) "Area of review" means a fixed radius around a facility of not less than one fourth
11 (1/4) mile.

12 (18) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of
13 two (2) samples taken on separate days in a seven (7) day period.

14 (19) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of
15 three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive
16 days with a minimum of twenty (20) days occurring between the first and last sample days.

17 (20) "Association of Boards of Certification" or "ABC" means that organization which serves
18 as an information center for certification activities, recommends minimum standards and
19 guidelines for classification of water supply and wastewater systems, and assists authorities in
20 establishing new certification programs and upgrading existing programs.]

21 (10) [(21)] "Available" means located within the planning area and:

22 (a) Located within one and zero-tenths (1.0) mile of a regional facility for a WWTP
23 [WWTPs] with an average daily design capacity larger than 1,000 gpd. [The distance shall be

1 ~~measured along the most feasible route of connection to a point where the downstream sewer has~~
2 ~~capacity to carry the additional flow]; or~~

3 (b) For new construction, if the distance is one and zero-tenths (1.0) mile or more, where it is
4 cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

5 ~~[(22) "Average monthly discharge limitation" means the highest allowable average of daily~~
6 ~~discharges over a calendar month, calculated as the sum of all daily discharges measured during~~
7 ~~a calendar month divided by the number of daily discharges measured during that month.~~

8 ~~(23) "Average weekly discharge limitation" means the highest allowable average of daily~~
9 ~~discharges over a calendar week, calculated as the sum of all daily discharges measured during a~~
10 ~~calendar week divided by the number of daily discharges measured during that week.~~

11 ~~(24) "Balanced indigenous community" means a biotic community typically characterized by~~
12 ~~diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary~~
13 ~~food chain species, and a lack of domination by pollution tolerant species. The community may~~
14 ~~include historically nonnative species introduced in connection with a program of wildlife~~
15 ~~management and species whose presence or abundance results from substantial, irreversible~~
16 ~~environmental modification. Normally[, however,] such a community does not include species~~
17 ~~whose presence or abundance is attributable to the introduction of pollutants that will be~~
18 ~~eliminated by compliance of all sources with 401 KAR 5:065, and may not include species~~
19 ~~whose presence or abundance is attributable to alternative effluent limitations imposed pursuant~~
20 ~~to 401 KAR 5:055.~~

21 ~~(25) "Barrel" means forty two (42) U.S. gallons.]~~

22 (11) ~~(26)~~ "BAT" means best available technology economically achievable.

23 ~~(27) "BCT" means best conventional pollutant control technology.]~~

(12) [(28)] "Best management practices" or "BMPs" means:

(a) For agriculture operations, as defined by KRS 224.71-100(3); or

(b) For all other purposes:

1. ~~[for purposes other than agriculture operations,]~~ Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2. ~~[BMPs also include]~~ Treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(13) [(29)] "Biochemical oxygen demand", "BOD", or "BOD₅" **is defined by 40 C.F.R. 133.101(d), effective July 1, 2008. [means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.]**

[(30)] "BMPs" means best management practices.

(31) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(32) "BOD" or "BOD₅" means biochemical oxygen demand.

(14) [(33)] "BPT" means best practicable technology currently available.

(34) ~~"Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys its discharge to the building sewer which begins two (2) feet outside the building wall.]~~

(15) [(35)] "Building sewer" means that part of the drainage system that ~~[which]~~ extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys

1 its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

2 (16) ~~[(36)]~~ "Bypass" means the intentional diversion of sewage or waste-streams from a
3 portion of a facility or industrial user's treatment facility.

4 ~~[(37)] "°C" means degrees Celsius.~~

5 ~~(38) "CAH" means cold water aquatic habitat.]~~

6 (17) ~~[(39)]~~ "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not
7 including the nitrogenous oxygen demand of the wastewater.

8 ~~[(40)] "Cation exchange capacity" or "CEC" means the measure of the ability of a soil to retain~~
9 ~~cations in a form available for uptake by plants. CEC is expressed in milliequivalents per 100~~
10 ~~grams of soil.~~

11 ~~(41) "CBOD" means carbonaceous biochemical oxygen demand.~~

12 ~~(42) "CEC" means cation exchange capacity.~~

13 ~~(43) "CERCLA" means the Comprehensive Environmental Response, Compensation, and~~
14 ~~Liability Act, as amended at 42 U.S.C. 9601 et seq.~~

15 ~~(44) "Certificate" means the certificate of competency issued by the secretary or the secretary's~~
16 ~~designated agent stating that the operator has met the requirements for the specified operator~~
17 ~~classification as set by 401 KAR 5:010.]~~

18 (18) ~~[(45)]~~ "Certified operator" means an individual who holds an active certified operator's
19 certificate issued in accordance with 401 KAR 11:050 ~~[a wastewater operator employed at a~~
20 ~~wastewater system who has primary responsibility for the system or a portion thereof which may~~
21 ~~affect the performance of the system and who holds a certificate of competency meeting the~~
22 ~~requirements of 401 KAR 5:010].~~

23 (19) ~~[(46)]~~ "cfm" means cubic feet per minute.

1 ~~[(47) "C.F.R." means Code of Federal Regulations.~~

2 ~~(48) "Chronic criteria" means the highest instream concentration of a toxic substance or an~~
3 ~~effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful~~
4 ~~effect.~~

5 (20) ~~[(49)]~~ "Chronic toxicity" means lethality, reduced growth or reproduction, or other
6 harmful effect sustained by either indigenous aquatic organisms or representative indicator
7 organisms used in toxicity tests due to long-term exposures, relative to the life span of the
8 organisms or a significant portion of their life span, due to toxic substances or mixtures of toxic
9 substances.

10 ~~(50) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-~~
11 ~~five (25) percent inhibition of growth or reproduction to the test organisms by the end of the~~
12 ~~chronic exposure period.~~

13 ~~(51) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended, (33~~
14 ~~U.S.C. Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.~~

15 (52) "Coal remining operation" means a surface coal mining operation which begins after July
16 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also
17 means a surface coal mining operation existing on July 11, 1990, which receives a permit revision
18 from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance
19 with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before
20 August 3, 1977.

21 (53) "COD" means chemical oxygen demand.

22 (54) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that
23 will support indigenous aquatic life or self sustaining or reproducing trout populations on a year-

~~round basis.]~~

(21) ~~[(55)]~~ "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water runoff as well as sanitary wastewater.

(22) ~~[(56)]~~ "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

~~[(57)] "Composite sample" means:~~

~~(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow;~~

~~(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow;~~

~~(c) An effluent portion collected continuously over a period of twenty four (24) hours at a rate proportional to the flow; or~~

~~(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.]~~

(23) ~~[(58)]~~ "Concentrated animal feeding operation" **or "CAFO"** means one (1) of the following: [; for purposes of 401 KAR 5:005 and 401 KAR 5:050 to 401 KAR 5:080, an animal feeding operation where:]

(a) "Large concentrated animal feeding operation" as defined in subsection (72) of this section;

(b) "Medium concentrated animal feeding operation" as defined in subsection (84) of this section; or

(c) "Small concentrated animal feeding operation" as defined in subsection (150) of this

subsection.

[More than the following numbers of indicated animals are confined:

1. ~~1,000 slaughter and feeder cattle;~~

2. ~~700 mature dairy cattle, whether milked or dry cows;~~

3. ~~2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);~~

4. ~~500 horses;~~

5. ~~10,000 sheep or lambs;~~

6. ~~55,000 turkeys;~~

7. ~~100,000 laying hens or broilers if the facility has continuous overflow watering;~~

8. ~~30,000 laying hens or broilers if the facility has a liquid manure system;~~

9. ~~5,000 ducks; or~~

10. ~~1,000 animal units; or~~

(b)1. More than the following number and types of animals are confined:

a. ~~300 slaughter or feeder cattle;~~

b. ~~200 mature dairy cattle, whether milked or dry cows;~~

c. ~~750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);~~

d. ~~150 horses;~~

e. ~~3,000 sheep or lambs;~~

f. ~~16,500 turkeys;~~

g. ~~30,000 laying hens or broilers if the facility has continuous overflow watering;~~

h. ~~9,000 laying hens or broilers if the facility has a liquid manure system;~~

i. ~~1,500 ducks; or~~

j. ~~300 animal units; and~~

~~2. Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.~~

~~(c) If an animal feeding operation discharges only during a twenty five (25) year, twenty four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentrated animal feeding operation.~~

~~(59) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401 KAR 5:060.]~~

~~(24) [(60)] "Consolidation sewer" means a conduit, without direct sanitary connections, that [which] intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.~~

~~(25) [(61)] "Continuous facility discharge" means a discharge that [which] occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.~~

~~[(62)] "Control authority" means the POTW if the POTW has an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.~~

~~(63) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.]~~

~~(26) [(64)] "Conventional pollutant" means biochemical oxygen demand (BOD), chemical~~

oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, e. coli, or [and] phosphorus.

~~[(65) "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.]~~

(27) ~~[(66)]~~ "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents that ~~[which]~~ represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

~~[(67) "CSO" means combined sewer overflow.~~

~~(68) "CWA" means the Clean Water Act, as amended.~~

~~(69) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.]~~

(28) ~~[(70)]~~ "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program pursuant to ~~[under CWA Section 402,]~~ 33 U.S.C. Section 1342.

(29) ~~[(71)]~~ "Day" means a twenty-four (24) hour period.

(30) "Design flow" means the long-term daily average flow the wastewater treatment plant

1 can treat and remain in compliance with the overall performance requirements during its design
2 life.

3 ~~[(72) "Designated project area" means the portions of the waters of the commonwealth within~~
4 ~~which the permittee or permit applicant plans to confine the cultivated species, using a method or~~
5 ~~plan of operation, including, but not limited to, physical confinement, which, on the basis of~~
6 ~~reliable scientific evidence, is expected to ensure that specific individual organisms comprising~~
7 ~~an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and~~
8 ~~be harvested within a defined geographic area.]~~

9 (31) ~~[(73)]~~ "Direct discharge" means the discharge of a pollutant into waters of the
10 commonwealth if the discharge is not included under the definition of indirect discharger and [~~;~~
11 ~~but~~] does not include a discharge of animal waste onto land by land application if the discharge
12 does not reach the waters of the commonwealth.

13 (32) ~~[(74)]~~ "Disappearing stream" means an intermittent or perennial surface stream that
14 terminates and drains underground through caves, fractures, or swallets in the stream bed.

15 (33) ~~[(75)]~~ "Discharge" or "discharge of a pollutant" means the [~~any~~] addition of a [~~any~~]
16 pollutant or combination of pollutants to waters of the commonwealth from a [~~any~~] point source.
17 ~~[This definition includes, but is not limited to, additions of pollutants into waters of the~~
18 ~~commonwealth from surface run-off which is collected or channeled by human effort; discharges~~
19 ~~through pipes, sewers or other conveyances whether publicly or privately owned which do not~~
20 ~~lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading~~
21 ~~into privately owned treatment works.]~~

22 (34) ~~[(76)]~~ "Discharge monitoring report" or "DMR" means the report including any
23 subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by

1 KPDES permittees.

2 ~~[(77) "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted~~
3 ~~to be used, for the sole purpose of disposing of any water, gas, produced water, or other fluid by~~
4 ~~injection or other method into a subsurface zone.]~~

5 (35) ~~[(78)]~~ "Division" means the Kentucky Division of Water, within the Department for
6 Environmental Protection, Energy and Environment ~~[Environmental and Public Protection]~~
7 Cabinet.

8 ~~[(79) "DMR" means discharge monitoring report.]~~

9 (36) ~~[(80)]~~ "Domestic" means relating to household wastes or other similar wastes. It is used
10 to distinguish municipal, household, or commercial water or wastewater services from industrial
11 water or wastewater services.

12 (37) ~~[(81)]~~ "Domestic sewage" means sewage devoid of industrial or other wastes and **that**
13 **[which]** is typical of waste received from residential facilities. It may include wastes from
14 commercial developments, schools, restaurants, and other similar developments.

15 ~~[(82) "Domestic water supply" or "DWS" means surface waters that with conventional~~
16 ~~treatment are suitable for human consumption through a public water system as defined in 401~~
17 ~~KAR 8:010, culinary purposes, or for use in any food or beverage processing industry; and meet~~
18 ~~state and federal regulations under the Safe Drinking Water Act, as amended, 42 U.S.C. 300f-~~
19 ~~300j.]~~

20 (38) ~~[(83)]~~ "Draft permit" means a document prepared pursuant to ~~[under]~~ 401 KAR 5:075
21 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue,
22 revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent
23 to deny a permit as provided in 401 KAR 5:075. It does not include a proposed permit; a denial

of a request for modification, revocation, and reissuance; or a denial of a request for revocation.

~~[(84) "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.~~

~~(85) "Dry gas well" means a gas well producing one (1) barrel or less of produced water at maximum production conditions during a given twenty-four (24) hour period.~~

~~(86) "DWS" means domestic water supply.]~~

(39) ~~[(87)]~~ "Effluent ditch" means that portion of a treatment system that ~~[which]~~ is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger, that ~~[which]~~ transports a discharge to surface waters of the commonwealth.

~~[(88) "Effluent lagoon" means a treatment lagoon.]~~

(40) ~~[(89)]~~ "Effluent limitation" is defined by ~~[at]~~ KRS 224.01-010(12).

(41) ~~[(90)]~~ "Effluent limitations guideline" **is defined by 40 C.F.R. 122.2, effective July 1, 2008.** ~~[means a federal regulation published by the administrator pursuant to [under CWA Section 304(b),] 33 U.S.C. Section 1314(b) to adopt or revise technology based effluent limitations.]~~

~~[(91) "Engineer" is defined by KRS 322.010(2).~~

~~(92) "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.]~~

(42) ~~[(93)]~~ "Environmental Protection Agency", **"EPA,** or ~~["EPA" or]~~ "U.S. EPA" means the U.S. ~~[United States]~~ Environmental Protection Agency.

~~[(94) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.]~~

(43) ~~[(95)]~~ "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram

negative, nonspore forming, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

~~[(96) "Establishment" means a manufacturing or industrial works or facility in the operation of which sewage, industrial wastes, or other wastes are generated or stored including but not limited to an industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, or oil refinery.~~

~~(97) "Eutrophication" means the enrichment of a surface water by the discharge or addition of a nutrient.]~~

(44) ~~[(98)]~~ "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030 ~~[5:030]~~.

(45) ~~[(99)]~~ "Excessive infiltration" means a high groundwater period induced peak infiltration rate that: ~~[which]~~

(a) Results in an operational problem ~~[problems]~~ and permit violation ~~[violations]~~ at the WWTP or results in recurring overflows from the sewer system or the WWTP; and

(b) ~~[-It]~~ Does not include:

1. An overflow that results ~~[Overflows which result]~~ from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly; or

2. A resulting overflow if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

~~[- For combined sewer systems, infiltration shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.]~~

(46) [(400)] "Excessive inflow" means a rainfall induced peak inflow rate that: ~~[which]~~

(a) Results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP; and ~~[For combined sewer systems, inflow shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements. It]~~

(b) Does not include:

1. A combined sewer system if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements; or

2. An overflow that results ~~[Overflows which result]~~ from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

~~[(401) "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.]~~

~~(402) "Existing use" means a legitimate use being attained in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.~~

~~(403) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.~~

~~(404) "°F" means degrees Fahrenheit.]~~

(47) [(405)] "Facility" means:

(a) In ~~[For purposes of]~~ 401 KAR 5:005 or 401 KAR 5:006, a sewage system as defined in KRS 224.01-010 except for septic tanks, pretreatment facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090; or

(b) In ~~[For purposes of]~~ 401 KAR 5:050 through ~~[to]~~ 401 KAR 5:080 and if used in

1 conjunction with activity, any KPDES point source, or any other facility, including land or
2 related appurtenances ~~[thereto]~~, that is subject to regulation under the KPDES program, ~~;~~ or

3 ~~(e) For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or~~
4 ~~improvement used in the exploration, drilling, or production of oil or gas or used for treating,~~
5 ~~storing, or disposing of produced water.~~

6 ~~(106) "Facilities or equipment" means buildings, structures, process or production equipment,~~
7 ~~or machinery which form a permanent part of the new source and which will be used in its~~
8 ~~operation, if these facilities or equipment are of such value as to represent a substantial~~
9 ~~commitment to construct. It excludes facilities or equipment used in connection with feasibility,~~
10 ~~engineering, and design studies regarding the source or water pollution treatment for the source.]~~

11 ~~(48) [(407)]~~ "Fecal coliform" means the portion of the coliform group of bacteria that ~~[which]~~
12 are present in the intestinal tract or the feces of warm-blooded animals. It ~~[generally]~~ includes
13 organisms that ~~[which]~~ are capable of producing gas from lactose broth in a suitable culture
14 medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus
15 two-tenths (0.2) degrees C.

16 ~~[(108) "Filter strip" means a strip or area of vegetation for removing sediment, organic~~
17 ~~material, and other pollutants from runoff and wastewater.]~~

18 ~~(49) [(409)]~~ "Flood relief sewer" means a conduit, without direct sanitary connections, that is
19 used to transport sewage if ~~[when]~~ a flood control structure or overflow detention basin is in
20 operation.

21 ~~(50) [(410)]~~ "Force main" means a conduit used to transport sewage from a pump discharge
22 to a sewer line, pump station, or WWTP.

23 ~~[(411) "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead~~

1 ~~gas, and all other hydrocarbons not defined as oil.]~~

2 (51) [(112)] "General permit" means a [any] KPDES permit authorizing a category of
3 discharges under KRS Chapter 224 within a geographical area, issued pursuant to [under] 401
4 KAR 5:055.

5 [(113)] "Geologically isolated" ~~means a zone separated from drinking water aquifers and free~~
6 ~~of known open faults or fractures and free of any unprotected wells within the area of review.]~~

7 (52) [(114)] "GPD" or "gpd" means gallons per day.

8 [(115)] "Grab sample" means:

9 ~~(a) For purposes of 401 KAR 5:045, a single instantaneous portion of the effluent; or~~

10 ~~(b) For purposes of 401 KAR 5:050 to 401 KAR 5:080, a single effluent portion which is not a~~
11 ~~twenty-four (24) hour composite sample.]~~

12 (53) [(116)] "Groundwater" means the subsurface water occurring in the zone of saturation
13 beneath the water table and perched water zones below the B soil horizon including water
14 circulating through fractures, bedding planes, and solution conduits.

15 [(117)] "Harmonic mean flow" ~~means the reciprocal of the mean of the reciprocal daily flow~~
16 ~~values.]~~

17 [(118)] "Hazardous substance" means, for purposes of 401 KAR 5:050 to 401 KAR 5:080, any
18 ~~pollutant designated under 40 C.F.R. Part 116.~~

19 [(119)] "High quality water" ~~means a surface water categorized as high quality by the cabinet~~
20 ~~pursuant to 401 KAR 5:030.~~

21 [(120)] "Holding pit" ~~means an earthen excavated depression which receives and stores~~
22 ~~produced water at a facility.~~

23 [(121)] "Hydraulic gradient" ~~means the vertical distance measured from the surface of the~~

1 ~~lagoon, one (1) foot below the spillway, to the bottom of the liner, divided by the thickness of the~~
2 ~~liner.~~

3 ~~(122) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir~~
4 ~~that extends below the metalimnion to the bottom.~~

5 ~~(123) "IC25" means an inhibition concentration of twenty-five (25) percent.~~

6 ~~(124) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not~~
7 ~~composed entirely of storm water except discharges pursuant to a KPDES permit, other than the~~
8 ~~KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting~~
9 ~~from fire fighting activities.~~

10 ~~(125) "Impact" means, for the purpose of 401 KAR 5:026 through 401 KAR 5:031, a change in~~
11 ~~the chemical, physical, or biological quality or condition of a surface water.~~

12 ~~(126) "Impairment" means, for the purpose of 401 KAR 5:026 through 401 KAR 5:031, a~~
13 ~~detrimental impact to a surface water that prevents attainment of a designated use.~~

14 ~~(127) "Inactive mining operations" means mining sites that are not being actively mined, but~~
15 ~~which have an identifiable owner or operator. Inactive mining operations do not include sites~~
16 ~~where mining claims are being maintained prior to disturbances associated with the extraction,~~
17 ~~beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken~~
18 ~~for the sole purpose of maintaining a mining claim.~~

19 ~~(128) "Incorporated place" means a city, town, township, or village that is created under the~~
20 ~~Kentucky Revised Statutes.~~

21 ~~(129) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not~~
22 ~~limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians,~~
23 ~~and fishes. Under some natural conditions one (1) or more of the above groups may be absent from~~

1 a surface water.

2 (130) "~~Indirect discharge~~" or "~~discharge~~" means, for purposes of 401 KAR 5:057, the
3 introduction of pollutants into a POTW from a nondomestic industrial source regulated by the
4 program.

5 (131) "~~Indirect discharger~~" means a nondomestic discharger introducing pollutants to a
6 publicly owned treatment works.

7 (132) "~~Industrial user~~" or "~~user~~" means a source of indirect discharge.

8 (133) "~~Industrial wastes~~" means any liquid or other waste resulting from a process of
9 industry, manufacture, trade, or business; or from the depletion of a natural resource.]

10 (54) [(134)] "Industrial wastewater treatment plant" or "IWWTP" means a privately owned
11 WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

12 (55) [(135)] "Infiltration" **is defined by 40 C.F.R. 35.905, effective July 1, 2008.** [means
13 ~~water other than wastewater that enters a sewer system from the ground through means~~
14 ~~such as defective pipes, pipe joints, connections, or manholes.~~]

15 (56) [(136)] "Inflow" **is defined by 40 C.F.R. 35.905, effective July 1, 2008.** [means water
16 ~~other than wastewater that enters a sewer system from means such as roof leaders, yard~~
17 ~~drains, area drains, drains from springs or swampy areas, openings in manhole covers,~~
18 ~~cross connections with storm sewers, catch basins, cooling towers, storm waters, source~~
19 ~~runoff, street wash waters, drainage, or any other source that [which] directs rainwater~~
20 ~~into the sewer system.~~]

21 [(137) "Inhibition concentration of twenty five (25) percent" or "IC25" means the
22 concentration that is determined by a linear interpolation method for estimating the concentration
23 at which a twenty five (25) percent reduction is shown in reproduction or growth in test organisms,

1 ~~and which statistically approximates the concentration at which no unacceptable chronic effect is~~
2 ~~observed.]~~

3 (57) ~~[(138)]~~ "Injection" means a type of land application in which the waste is placed directly
4 beneath the land surface.

5 ~~[(139) "Intended use plan" means that document developed by the cabinet annually or~~
6 ~~biennially, as necessary, which contains a project priority list that prioritizes the cabinet's projects~~
7 ~~qualifying for federally assisted wastewater revolving fund monies pursuant to KRS Chapter 224A~~

8 (58) ~~[(140)]~~ "Interference" is defined by 40 C.F.R. 403.3(k), effective July 1, 2008. ~~[means~~
9 ~~a discharge which, alone or in conjunction with discharges from other sources:~~

10 ~~(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge~~
11 ~~processes, use, or disposal; and~~

12 ~~(b) Is a cause of a violation of a requirement of the POTW's KPDES permit, including an~~
13 ~~increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or~~
14 ~~disposal in compliance with the following statutory provisions and administrative regulations or~~
15 ~~permits issued thereunder or under more stringent local administrative regulations: Section 405~~
16 ~~of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA),~~
17 ~~including RCRA, and including any administrative regulations contained in a sludge~~
18 ~~management plan prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act~~
19 ~~as amended, and the Toxic Substances Control Act as amended.]~~

20 (59) ~~[(141)]~~ "Intermediate facility" means an intermediate [a] WWTP ~~[with an average daily~~
21 ~~design capacity of 10,000 to 49,999 gallons per day (GPD)] or a sewer line [lines] of 2,500 feet~~
22 ~~to 5,000 feet in length including appurtenances.~~

23 (60) ~~[(142)]~~ "Intermediate nonpublicly-owned treatment works" means a facility with ~~[which~~

has] a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and that ~~[which]~~ is not a POTW.

(61) ~~[(143)]~~ "Intermediate WWTP" means a [÷

~~(a)]~~ WWTP with an average daily design capacity of 10,000 to 49,999 gpd. [÷~~or~~

~~(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes less than or equal to 500 tons per hour of raw coal.~~

~~(144) "Intermittent water" means a stream that flows only at certain times of the year.]~~

(62) ~~[(145)]~~ "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator pursuant to 33 U.S.C. 1251-1387 ~~[under the CWA]~~ or KRS Chapter 224.

~~[(146) "IWWTP" means an industrial WWTP.~~

~~(147) "KAR" means Kentucky Administrative Regulations.]~~

(63) ~~[(148)]~~ "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

~~[(149) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including but not limited to a sinkhole drain, karst window, swallet, spring, sinking stream, or cave.]~~

(64) ~~[(150)]~~ "Kentucky Intersystem ~~[Intermunicipal]~~ Operational Permit" or "KISOP" ~~["KIMOP"]~~ means a permit issued pursuant to 401 KAR 5:005 for operating a ~~[publicly-owned]~~ sewer system that ~~[which]~~ has more than 5,000 linear feet of sewer line that ~~[which]~~ discharges to a sewer system, or a WWTP that ~~[which]~~ is owned by another person.

(65) ~~[(151)]~~ "Kentucky No Discharge Operational Permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP ~~that [which]~~ does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(66) ~~[(152)]~~ "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

~~[(153)] "kg" means kilograms.~~

~~[(154)] "KPDES" means the Kentucky Pollutant Discharge Elimination System.]~~

(67) ~~[(155)]~~ "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

~~[(156)] "KRS" means Kentucky Revised Statutes.]~~

(68) ~~[(157)]~~ "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection directly beneath the surface.

(69) "Land application area" is defined by 40 C.F.R. 122.23(b)(3), effective July 1, 2008.

(70) ~~[(158)]~~ "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(71) "Large animal feeding operation" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves;

(c) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes ~~[shall include]~~

heifers, steers, bulls, or cow or calf pairs;

(d) 2,500 swine each weighing fifty-five (55) pounds or more;

(e) 10,000 swine each weighing less than fifty-five (55) pounds ~~[or more]~~;

(f) ~~[(e)]~~ 500 horses;

(g) ~~[(f)]~~ 10,000 sheep or lambs;

(h) ~~[(g)]~~ 55,000 turkeys;

(i) ~~[(h)]~~ 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) ~~[(i)]~~ 125,000 chickens other than laying hens, if the AFO uses other than a liquid manure handling system;

(k) ~~[(j)]~~ 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

(l) ~~[(k)]~~ 5,000 ducks, if the AFO uses a liquid manure handling system.

(72) "Large concentrated animal feeding operation" is defined by 40 C.F.R. 122.23(b)(4), effective July 1, 2008 ~~[122.23(4)]~~.

(73) ~~[(159)]~~ "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or a sewer line ~~[lines]~~ of more than 5,000 feet in length including appurtenances.

~~[(160) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:~~

~~(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census; or~~

~~(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph~~

~~(a) of this subsection. In making this determination the cabinet may consider the following factors:~~

~~1. Physical interconnections between the municipal separate storm sewers;~~

~~2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;~~

~~3. The quantity and nature of pollutants discharged to waters of the commonwealth;~~

~~4. The nature of the receiving waters; and~~

~~5. Other relevant factors; or~~

~~(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer system, those municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.]~~

~~(74) [(161)] "Large nonpublicly-owned treatment works" means a facility that [which] has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and that [which] is not a POTW.~~

~~(75) [(162)] "Large WWTP" means [:~~

~~(a)] a WWTP with an average daily design capacity of 50,000 GPD or more. [; or~~

~~(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes more than 500 tons per hour of raw coal.~~

~~(163) "LC1" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.~~

~~(164) "LC50" means that concentration of a toxic substance or mixture of toxic substances that~~

1 is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test
2 during a specified exposure period.

3 ~~(165) "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 401~~
4 ~~KAR 5:080, facilities whose discharges result from the holding of unprocessed wood, for~~
5 ~~example, logs or roundwood with bark or after removal of bark held in self-contained bodies of~~
6 ~~water or stored on land where water is applied intentionally on the logs.]~~

7 (76) ~~[(466)]~~ "Long-term CSO control plan" means a control plan that ~~[which]~~ complies with
8 the ~~["]~~Combined Sewer Overflow Control Policy~~["]~~ issued by the U.S. EPA in the "Federal
9 Register" on April 19, 1994 (59 FR 18688)~~[, incorporated by reference in Section 3 of this~~
10 ~~administrative regulation].~~

11 (77) "Manure" is defined by 40 C.F.R. 122.23(b)(5), effective July 1, 2008.

12 ~~[(167) "Maintain" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, to preserve~~
13 ~~or keep in present condition by not allowing an adverse permanent or long-term change to water~~
14 ~~quality or to a population of an aquatic organism or its habitat.]~~

15 (78) ~~[(468)]~~ "Maintenance replacement" means replacement of:

16 (a) Existing component parts with component parts that have similar characteristics and
17 capacity; or

18 (b) A section of sewer or force main with the same size, alignment, and slope;

19 (c) The term does not include replacement of an entire WWTP with a new WWTP.

20 (79) ~~[(469)]~~ "Major facility" means a ~~[any]~~ KPDES facility or activity classified as a KPDES
21 facility ~~[such]~~ by the cabinet in cooperation with the regional administrator. Designation as a
22 major industry as used in KRS 224.70-120, does not indicate automatic classification as a major
23 facility.

(80) [(170)] "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including resource recovery, manufacturing, products distribution, or ~~[and]~~ wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(81) [(171)] "Major municipal separate storm sewer outfall" or "major outfall" is defined by 40 C.F.R. 122.26(b)(5), effective July 1, 2008. ~~[means:~~

~~(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or~~

~~(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.~~

~~(172) "Major outfall" means a major municipal separate storm sewer outfall.~~

~~(173) "Manmade" means constructed by humans.~~

~~(174) "Maximum allowable industrial loading" means the total mass of a pollutant that all industrial users of a POTW, or subgroup of a industrial users identified by the POTW, may discharge pursuant to limits developed under 401 KAR 5:057, Section 3(3).~~

~~(175) "Maximum daily discharge limitation" means the highest allowable daily discharge.]~~

(82) [(176)] "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(83) "Medium animal feeding operation means an AFO that stables or confines the type and number of animals within any of the following ranges:

(a) 200 to 699 mature dairy cows, whether milked or dry;

(b) 300 to 999 veal calves;

(c) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, or cow or calf pairs;

(d) 750 to 2,499 swine each weighing fifty-five (55) pounds or more;

(e) 3,000 to 9,999 swine each weighing less than fifty-five (55) pounds;

(f) 150 to 499 horses;

(g) 3,000 to 9,999 sheep or lambs;

(h) 16,500 to 54,999 turkeys;

(i) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 37,500 to 124,999 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(k) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or

(m) 1,500 to 4,999 ducks if the AFO uses a liquid manure handling system.

(84) "Medium concentrated animal feeding operation is defined by 40 C.F.R. 122.23(b)(6), effective July 1, 2008 [CFR 122.23(6)].

~~[(177) "Medium municipal separate storm sewer system" means all municipal separate storm~~

sewers that are either:

(a) ~~Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or~~

(b) ~~Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:~~

1. ~~Physical interconnections between the municipal separate storm sewers;~~

2. ~~The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;~~

3. ~~The quantity and nature of pollutants discharged to waters of the commonwealth;~~

4. ~~The nature of the receiving waters; and~~

5. ~~Other relevant factors; or~~

(c) ~~The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.~~

~~(178) "Metalimnion" means the region of the thermocline.]~~

~~(85) [(179)] "µg/l" means micrograms per liter, same as ppb, assuming unit density.~~

~~(86) [(180)] "mgd" or "MGD" means million gallons per day.~~

~~[(181) "mg/l" means milligrams per liter, same as ppm, assuming unit density.]~~

(87) [(182)] "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution[,] and is equivalent to parts per million in water, assuming unit density.

~~[(183) "Minimum design volume" means the treatment volume in the lagoon necessary to maintain an anaerobic condition in the lagoon.]~~

(88) [(184)] "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities [~~including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry]~~ and has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. [~~If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.~~]

(89) [(185)] "Minor modification to a WWTP" means [~~, for purposes of construction approvals required by 401 KAR 5:005,~~] a modification that [~~which~~] does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(90) [(186)] "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

~~[(187) "MS4" means a municipal separate storm sewer system.]~~

(91) [(188)] "Municipal separate storm sewer system" or "MS4" is defined by 40 C.F.R. 122.26(b)(8), effective July 1, 2008. [~~means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to subsections (160), (177), and (286) of this section, or designated under 401 KAR 5:060, Section 12(1)(a)5,~~

1 ~~consisting of a conveyance or system of conveyances, including roads with drainage systems,~~
2 ~~municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:~~

3 ~~(a) Owned or operated by a state, city, town, county, district, association, or other public~~
4 ~~body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial~~
5 ~~wastes, storm water, or other wastes, including special districts under state law such as a sewer~~
6 ~~district, flood control district, or drainage district, or similar entity, or a designated and approved~~
7 ~~management agency under Section 208 of the CWA, 33 U.S.C. 128, that discharges to waters of~~
8 ~~the commonwealth;~~

9 ~~(b) Designed or used for collecting or conveying storm water;~~

10 ~~(c) Which is not a combined sewer; and~~

11 ~~(d) Which is not part of a POTW.]~~

12 ~~(92) [(189)] "Municipality" means a city, district, or other public body created by or under~~
13 ~~the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial wastes,~~
14 ~~or other wastes, or a designated and approved management agency pursuant to [under CWA~~
15 ~~Section 208,] 33 U.S.C. 1288.~~

16 ~~(93) [(190)] "National Pollutant Discharge Elimination System" or "NPDES" **is defined by**~~
17 ~~**40 C.F.R. 122.2, effective July 1, 2008. [means the national program for issuing, modifying,**~~
18 ~~**revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and**~~
19 ~~**enforcing pretreatment requirements.]**~~

20 ~~(94) [(191)] "National pretreatment standard", "pretreatment standard", or "standard" **is**~~
21 ~~**defined by 40 C.F.R. 403.3(l), effective July 1, 2008 [means a federal regulation containing**~~
22 ~~**pollutant discharge limits promulgated by the U.S. EPA in accordance with 33 U.S.C.**~~
23 ~~**1311(b) and (c) that [Section 307(b) and (c) of the Act, which] applies to industrial users].**~~

1 This term includes prohibitive discharge limits established pursuant to 401 KAR 5:057.

2 (95) [(192)] "Natural Resources Conservation Service" or "NRCS" means the organization
3 created pursuant to 7 U.S.C. 6962 in the U.S. [United States] Department of Agriculture. [The
4 NRCS was formerly called the Soil Conservation Service.

5 (193) "Natural temperature" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031,
6 the temperature that would exist in waters of the commonwealth without the change of enthalpy of
7 artificial origin, as contrasted with that caused by climatic change or naturally occurring variable
8 temperature associated with riparian vegetation and seasonal changes.

9 (194) "Natural water quality" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031,
10 those naturally occurring physical, chemical, and biological properties of waters.

11 (195) "Net discharge" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, the
12 amount of substance released to a surface water by excluding the influent value from the effluent
13 value if both the intake and discharge are from and to the same or similar body of water.]

14 (96) [(196)] "New discharger" means, as used in 401 KAR 5:060 through [for purposes of
15 401 KAR 5:050 to] 401 KAR 5:080, a [any] building, structure, facility, or installation:

- 16 (a)1. From which there is or may be a discharge of pollutants;
- 17 2. That did not commence the discharge of pollutants at a particular site prior to August 13,
18 1979;
- 19 3. That [Which] has never received a finally effective NPDES or KPDES permit for
20 discharges at that site; and
- 21 4. That [Which] is not a new source.

22 (b) This definition includes an indirect discharger that [which] commences discharging into
23 the waters of the commonwealth after August 13, 1979. It also includes any existing mobile

point source that begins discharging at a site for which it does not have a permit.

(97) [(197)] "New source" means as used in 401 KAR 5:060 through [:

(a) ~~For purposes of 401 KAR 5:050 to~~ 401 KAR 5:080, a [any] building, structure, facility, or installation from which there is or may be a [direct or indirect] discharge of pollutants, the construction of which commenced:

(a)[1.] After promulgation of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that [or pretreatment standards which] are applicable to the source; or

(b)[2.] After publication [proposal] of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that [or pretreatment standards which] are applicable to the source, but only if the federal standards are promulgated within 120 days of publication. [their proposal; or

(b)1. ~~For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:~~

a. ~~The building, structure, facility or installation is constructed at a site at which no other source is located;~~

b. ~~The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or~~

c. ~~The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.~~

1 2. ~~Construction on a site at which an existing source is located results in a modification~~
2 ~~rather than a new source if the construction does not create a new building, structure, facility, or~~
3 ~~installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters,~~
4 ~~replaces, or adds to existing process or production equipment.~~

5 3. ~~Construction of a new source has commenced if the owner or operator has:~~

6 a. ~~Begun, or caused to begin as part of a continuous on-site construction program:~~

7 (i) ~~A placement, assembly, or installation of facilities or equipment;~~

8 (ii) ~~Significant site preparation work including clearing, excavation, or removal of existing~~
9 ~~buildings, structures, or facilities which is necessary for the placement, assembly, or installation~~
10 ~~of new source facilities or equipment; or~~

11 b. ~~Entered into a binding contractual obligation for the purchase of facilities or equipment~~
12 ~~which are intended to be used in its operation within a reasonable time. Options to purchase or~~
13 ~~contracts which may be terminated or modified without substantial loss, and contracts for~~
14 ~~feasibility, engineering, and design studies do not constitute a contractual obligation under this~~
15 ~~clause.]~~

16 (98) [(198)] **~~"Nonconventional pollutant" means a pollutant not considered to be a~~**
17 **~~conventional pollutant, including a priority pollutant established [pollutants identified] in~~**
18 **~~401 KAR 5:060.~~**

19 (99) [(199)] **~~"Nonpoint" means any source of pollutants not defined by a point source, [as~~**
20 **~~used in this chapter.~~**

21 (200) ~~"Nonprocess industry" means an industry that generates and discharges only~~
22 ~~nonprocess wastewater while engaged in commercial activities including manufacturing,~~
23 ~~resource recovery, products distribution, and wholesale and retail trade. Each industry discharges~~

1 ~~nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges~~
2 ~~wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal~~
3 ~~to or greater than the ninety-six (96) hour lethal concentration for fifty (50) percent mortality (96~~
4 ~~LC50) for a representative indigenous aquatic organism. If any of the above conditions is not~~
5 ~~met, then the discharge is considered to be from a minor industry.~~

6 ~~(201) "NPDES" is defined in KRS 224.01-010.~~

7 ~~(202) "NRCS" means the Natural Resources Conservation Service.]~~

8 ~~(99) [(100)] [(203)] "Nutrient management plan" means the plan for an individual operation~~
9 ~~developed for the purpose of recycling nutrients from animal waste onto cropland or pasture. [in~~
10 ~~a manner that does not cause environmental harm.~~

11 ~~(204) "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum and other~~
12 ~~hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and~~
13 ~~which are not the result of condensation of gas after it leaves the underground reservoir.~~

14 ~~(205) "O&M" means operation and maintenance.~~

15 ~~(206) "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction,~~
16 ~~operation, or maintenance of any facility.]~~

17 ~~(100) [(101)] [(207)] "Operator" means a person involved in the operation of a facility or~~
18 ~~activity. [÷~~

19 ~~(a) Any person involved in the operation of a facility or activity;~~

20 ~~(b) For purposes of 401 KAR 5:010, any person involved in the operation of a wastewater~~
21 ~~system; or~~

22 ~~(c) For purposes of 401 KAR 5:090, any person who operates a facility.]~~

23 ~~(101) [(102)] [(208)] "Other wastes" means sawdust, bark or other wood debris, garbage,~~

1 refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and
2 other foreign substances not included within the definitions of industrial wastes and sewage that
3 ~~[which]~~ may cause or contribute to the pollution of ~~[any]~~ waters of the commonwealth.

4 **(102) [(103)] [(209)]** "Outfall" means, for municipal separate storm sewers, a point source at
5 the point where a municipal separate storm sewer discharges to waters of the Commonwealth,
6 but does not include open conveyances connecting two (2) municipal separate storm sewers, or
7 pipes, tunnels, or other conveyances that ~~[which]~~ connect segments of the same stream or other
8 waters of the Commonwealth and are used to convey waters of the Commonwealth.

9 ~~[(210)] "Outstanding national resource water" means a surface water categorized by the cabinet~~
10 ~~as an outstanding national resource water pursuant to 401 KAR 5:030.]~~

11 **(103) [(104)] [(211)]** "Outstanding state resource water" means a surface water designated by
12 the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031 ~~[5:031]~~.

13 **(104) [(105)] [(212)]** "Overburden" means ~~[any]~~ material of any nature, consolidated or
14 unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring
15 surface materials that are not disturbed by mining operations.

16 **(105) [(106)] [(213)]** "Overflow" means any intentional or unintentional diversion of flow
17 from a facility. ~~[:~~

18 ~~(a) Any intentional or unintentional diversion of flow from a facility; or~~

19 ~~(b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow from the~~
20 ~~POTW before the POTW treatment plant.]~~

21 **(106) [(107)] [(214)]** "Owner" means a [any] person **who has legal ownership of a**
22 **facility or activity regulated pursuant to 401 KAR Chapter 5** ~~[who **has financial** possesses~~
23 ~~**any** interest in a~~ ~~[:~~

1 ~~(a) The right to develop, operate, or produce oil or gas; or~~

2 ~~(b) Any facility or activity].~~

3 **(107)** ~~[(108)]~~ [(215)] "Package WWTP" means a factory-built WWTP that ~~[which]~~ is
4 transported to and assembled or set in place at the site.

5 ~~[(216) "Pass through" means a discharge which exits the POTW into waters of the~~
6 ~~commonwealth in quantities or concentrations which, alone or in conjunction with discharges~~
7 ~~from other sources, is a cause of violation of a requirement of the POTW's KPDES permit,~~
8 ~~including an increase in the magnitude or duration of a violation.~~

9 ~~(217) "pCi/l" means picocuries per liter.~~

10 ~~(218) "PCR" means primary contact recreation.]~~

11 **(108)** ~~[(109)]~~ [(219)] "Permit" means:

12 (a) As used in ~~[For purposes of]~~ 401 KAR 5:005 or 401 KAR 5:006, a document issued by
13 the cabinet that ~~[which]~~ authorizes the permittee to construct, modify, or operate a facility; **or**

14 (b) As used in ~~[For purposes of]~~ 401 KAR 5:050 through ~~[to]~~ 401 KAR 5:080, a KPDES
15 permit.

16 **(109)** ~~[(110)]~~ [(220)] "Plan of study" means a report that contains the following information
17 required for a regional facility plan by 401 KAR 5:006, Section 4:

18 (a) Planning area maps;

19 (b) A discussion of the need for sewer service in the area;

20 (c) Population projections; and

21 (d) An estimation of the twenty (20) year cost by category.

22 **(110)** ~~[(111)]~~ [(221)] "Planning area" means the geographic area proposed to be served by a
23 regional planning agency in a projected twenty (20) year period.

1 **(111) [(412)]** [(222)] "Point source" is defined by 33 U.S.C. 1362(14). [~~means any~~
2 ~~discernible, confined, and discrete conveyance, including but not limited to Any pipe, ditch,~~
3 ~~channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal~~
4 ~~feeding operation, from which pollutants are or may be discharged.~~] The term does not include
5 agricultural storm water run-off or return flows from irrigated agriculture.

6 **(112) [(413)]** [(223)] "POTW" means publicly-owned treatment works as defined in KRS
7 224.01-010.

8 **(113) [(414)]** [(224)] "POTW treatment plant" is defined by 40 C.F.R. 403.3(r), effective
9 July 1, 2008. [~~means that portion of the POTW that [which] is designed to provide~~
10 ~~treatment, including recycling and reclamation, of municipal sewage and industrial waste.~~]

11 [(225) "ppb" means parts per billion; assuming unit density, same as mg/l.

12 [(226) "ppm" means parts per million; assuming unit density, same as mg/l.

13 [(227) "Preexisting discharge" means any discharge that is occurring when applying for a
14 KPDES permit under 401 KAR 5:029 or 401 KAR 5:040.]

15 **(114) [(415)]** [(228)] "Pretreatment" is defined by 40 C.F.R. 403.3(s), effective July 1, 2008.
16 [~~means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of~~
17 ~~the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise~~
18 ~~introducing the pollutants into a POTW. The reduction or alteration may be obtained by physical,~~
19 ~~chemical, or biological processes, process changes or by other means, except as prohibited by 401~~
20 ~~KAR 5:057. Appropriate pretreatment technology includes control equipment, such as equalization~~
21 ~~tanks or facilities, for protection against surges or slug loadings that may interfere with or~~
22 ~~otherwise be incompatible with the POTW. However, if wastewater from a regulated process is~~
23 ~~mixed in an equalization facility with unregulated wastewater or with wastewater from another~~

regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.]

(115) [(116)] [(229)] "Pretreatment requirement" is defined by 40 C.F.R. 403.3(t), effective July 1, 2008. [means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.]

(116) [(117)] [(230)] "Pretreatment standard" means a national pretreatment standard.

~~[(231) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.~~

~~(232) "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.]~~

(117) [(118)] [(233)] "Primary responsibility" means personal, first hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the wastewater treatment plant or wastewater collection system is operated in accordance with accepted practices and with KRS Chapter 224 and 401 KAR Chapters 5 and 11. [having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the commonwealth, or to supervise others in conducting these practices.]

(118) [(119)] [(234)] "Privately-owned treatment works" is defined by 40 C.F.R. 122.2, effective July 1, 2008. [means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

~~(235) "Process wastewater" means any water which, during manufacturing or processing,~~

comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by product, or waste product.

~~(236) "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.]~~

(119) [(120)] "Production area" means, for animal feeding operations, the area defined by 40 C.F.R. 122.23(b)(8), effective July 1, 2008.

~~[(237) "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.]~~

(120) [(121)] [(238)] "Professional engineer" or "engineer" is defined by KRS 322.010(2).

(121) [(122)] [(239)] "Project priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A that [which] includes a priority ranking of applicants for the construction of wastewater treatment works under 33 U.S.C. 1313(e)(3)(H).

~~[(240) "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.]~~

(122) [(123)] [(241)] "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, if applicable, any public hearing and administrative appeals, that [which] is sent to U.S. EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(123) [(124)] [(242)] "Public water system" is defined by 40 C.F.R. 141.2, effective July 1, 2008. [shall have the meaning given it in 401 KAR 8:010.]

(124) [(125)] [(243)] "RCRA" means the Resource Conservation Recovery Act as amended, [(42 U.S.C. 6901-6992k [et seq.]).

1 ~~[(244) "Reclamation area" means the surface area of a coal mine which has been returned to~~
2 ~~required contour and on which revegetation (seeding or planting) work has commenced.]~~

3 **(125) [(126)]** [(245)] "Recommencing discharger" means a source that ~~[which]~~ recommences
4 discharge after terminating operations.

5 **(126) "Recurring discharge" means, as it relates to a sewer system overflow, a discharge**
6 **that occurs two (2) or more times in a twelve (12) month period.**

7 (127) [(246)] "Regional administrator" means the regional administrator of the Region IV
8 office of the U.S. EPA or the authorized representative of the regional administrator.

9 (128) [(247)] "Regional facility" means a facility that is:

10 (a) Owned by a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76,
11 96, 108, or 220; and

12 (b) Designated by a regional facility plan or water quality management plan to provide
13 wastewater collection, transportation, or treatment services for a specific area. [This facility shall
14 be owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76,
15 96, 108, or 220.]

16 (129) [(248)] "Regional facility plan" means a type of water quality management plan
17 addressing point sources of pollution for the purpose of areawide waste treatment management
18 planning prepared by the designated regional planning agency pursuant to ~~[Sections 201, 205,~~
19 ~~and 208 of the CWA]~~ 33 U.S.C. 1251-1387 to control point sources of pollution within a
20 planning area.

21 (130) [(249)] "Regional planning agency" means a governmental agency, such as a city,
22 county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has
23 been designated pursuant to 33 U.S.C. 1288 ~~[of the CWA]~~ and 40 C.F.R. ~~[Part]~~ 130 to provide

1 planning for the treatment of wastewater and for controls and recommendations relating to
2 wastewater for a particular area; and [-] those existing agencies that have developed plans
3 pursuant to 33 U.S.C. 1281, 1285, 1288, and 1313(e) to provide planning related to wastewater
4 collection, transportation, or treatment for a particular area [~~Sections 201, 205, 208, and 303(e)~~
5 ~~of the CWA shall be considered the regional planning agency for the area~~].

6 (131) [(250)] "Regional sewage collection system" means a sewage collection system
7 designated by a regional planning agency that [~~which~~] is owned by a city, county, or other public
8 body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

9 [~~(251) "Register" means to file forms with the division which contain information as to oil~~
10 ~~and gas well geographic location, production, produced water production, methods used for~~
11 ~~treating, storing, or disposing of produced water, and other information determined to be~~
12 ~~necessary by the division.~~]

13 (252) "~~Remined area~~" means only that area of any coal remining operation on which a coal
14 mining operation was conducted before August 3, 1977.

15 (253) "~~Removal~~" means, for purposes of 401 KAR 5:057, a reduction in the amount of a
16 pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the
17 POTW. The reduction or alteration may be obtained by physical, chemical, or biological means
18 and may be the result of specifically designed POTW capabilities or may be incidental to the
19 operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

20 (254) "~~Representative important species~~" means species which are representative, in terms of
21 their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the
22 body of water into which a discharge of heat is made.

23 (255) "~~Representative indicator organism~~" means an aquatic organism designated for use in

1 toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the
2 aquatic environment.

3 ~~(256) "Requester" means any industrial user or a POTW or other interested person seeking a~~
4 ~~variance from the limits specified in a categorical pretreatment standard.~~

5 ~~(257) "Residual solids" means the accumulated solid waste in the lower portion of a lagoon that~~
6 ~~contains greater than two and zero tenths (2.0) percent total solids by dry weight analysis.~~

7 ~~(258) "Rock crushing and gravel washing facilities" means facilities which process crushed and~~
8 ~~broken stone, gravel, and riprap.]~~

9 ~~(132) [(259)] "Run-off coefficient" means the fraction of total rainfall that will appear at a~~
10 ~~conveyance as run-off.~~

11 ~~(133) [(260)] "SARA" means the Superfund Amendments and Reauthorization Act, 42~~
12 ~~U.S.C. 9601-9675 [as amended].~~

13 ~~(134) [(261)] "Schedule of compliance" means a schedule of remedial measures included in a~~
14 ~~permit, including an enforceable sequence of interim requirements leading to compliance with~~
15 ~~KRS Chapter 224 and 401 KAR Chapters [Chapter] 4 through 11 [administrative regulations~~
16 ~~promulgated pursuant thereto].~~

17 ~~(135) "SDWA" means Safe Drinking Water Act, 42 U.S.C. 300f-300j-26.~~

18 ~~[(262) "SCR" means secondary contact recreation.~~

19 ~~(263) "Secondary contact recreation waters" means those waters that are suitable for partial~~
20 ~~body contact recreation, with minimal threat to public health due to water quality.~~

21 ~~(264) "Secondary industry category" means any industry category which is not a primary~~
22 ~~industry category.]~~

23 ~~(136) [(265)] "Secondary treatment" means that degree of treatment that [which] results in an~~

1 effluent quality that [~~which~~] meets the minimum requirements of 401 KAR 5:045.

2 (137) [(266)] "Service area" means that geographic area currently being served by a regional
3 facility.

4 (138) [(267)] "Seven-Q-ten" or "7Q₁₀" means that minimum average flow that [~~which~~] occurs
5 for seven (7) consecutive days with a recurrence interval of ten (10) years.

6 [(268) "Severe property damage" means substantial physical damage to property, damage to
7 the treatment facilities which causes them to become inoperable, or substantial and permanent
8 loss of natural resources which can reasonably be expected to occur in the absence of a bypass.
9 Severe property damage shall not mean economic loss caused by delays in production.]

10 (139) [(269)] "Sewage" means the water-carried human or animal wastes from residences,
11 buildings, or other places together with industrial wastes or underground, surface, storm or other
12 water, as may be present.

13 (140) [(270)] "Sewage sludge" **is defined by 40 C.F.R. 122.2, effective July 1, 2008.**
14 **[means the solids, residues, and precipitate separated from or created in sewage by the unit**
15 **processes of a wastewater treatment plant. Sewage as used in this definition means any**
16 **wastes, including wastes from humans, households, commercial establishments, industries,**
17 **and storm water run-off [,] that are discharged to or otherwise enter a wastewater**
18 **treatment plant.]**

19 (141) [(271)] "Sewer line" means a device [~~those devices~~] used for collecting, transporting,
20 pumping, or disposing of sewage, but not a building sewer that [~~which~~] serves an individual
21 building. A sewer line begins at the junction of two (2) building sewers **that** [~~which~~] serve
22 different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

23 (142) [(272)] "Sewer line extension" means a proposed construction project **that** [~~which~~]

1 extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

2 (143) [(273)] "Sewer system" means the network of sewer lines, pump stations, and force
3 mains that discharge to a common WWTP.

4 (144) [(274)] "SIC" means standard industrial classification.

5 (145) [(275)] "Significant industrial user" or "SIU" is defined by 40 C.F.R. 403.3(v),
6 **effective July 1, 2008.** [means:

7 (a) ~~Except as provided in paragraph (b) of this subsection:~~

8 1. ~~Industrial users subject to categorical pretreatment standards promulgated by EPA and~~
9 ~~codified in 40 C.F.R. Chapter I, Subchapter N (Parts 401 through 471); and~~

10 2. ~~Any other industrial user that:~~

11 a. ~~Discharges an average of 25,000 gallons per day or more of process wastewater to the~~
12 ~~POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;~~

13 b. ~~Contributes a process wastestream which makes up five (5) percent or more of the~~
14 ~~average dry weather hydraulic or organic capacity of the POTW treatment plant; or~~

15 c. ~~Is designated as such by the control authority on the basis that the industrial user has a~~
16 ~~reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment~~
17 ~~standard or requirement.~~

18 (b) ~~Upon a finding that an industrial user meeting the criteria for a significant industrial user~~
19 ~~has no reasonable potential for adversely affecting the POTW's operation or for violating a~~
20 ~~pretreatment standard or requirement, the control authority may, on its own initiative or in~~
21 ~~response to a petition received from an industrial user or a POTW, and in accordance with 401~~
22 ~~KAR 5:057, determine that the industrial user is not a significant industrial user.~~

23 (276) "Significant materials" means but is not limited to, and for purposes of 401 KAR 5:050

1 to 401 KAR 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic
2 pellets; finished materials such as metallic products; raw materials used in food processing or
3 production; hazardous substances designated under Section 101(14) of CERCLA, 42 U.S.C.
4 9601; any chemical the facility is required to report pursuant to Section 313 of Title III of
5 SARA; fertilizers, 42 U.S.C. 11023; pesticides; and waste products such as ashes, slag, and
6 sludge that have the potential to be released with storm water discharges.]

7 (146) [(277)] "Silvicultural point source" is defined by 40 C.F.R. 122.27(b)(1), effective July
8 1, 2008. [means, for purposes of 401 KAR 5:050 to 401 KAR 5:080, any discernible, confined,
9 and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage
10 facilities which are operated in connection with silvicultural activities and from which pollutants
11 are discharged into waters of the commonwealth. The term does not include nonpoint source
12 silvicultural activities such as nursery operations, site preparation, reforestation and subsequent
13 cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations,
14 surface drainage, or road construction and maintenance from which there is natural run-off.]

15 (147) [(278)] "Sinkhole" means a naturally occurring topographic depression in a karst area.
16 Its drainage is subterranean and serves as a recharge source for groundwater. **[and]** It is formed
17 by the collapse of a conduit or the solution of bedrock.

18 (148) [(279)] "Site" means, as used in 401 KAR 5:060 through[for purposes of 401 KAR
19 5:050 to] **[401 KAR]** 5:080, the land or water area where a [any] facility or activity is physically
20 located or conducted, including adjacent land used in connection with the facility or activity.

21 [(280)] "SIU" means significant industrial user.]

22 (149) [(281)] "Sludge requirements" is defined by 40 C.F.R. 403.7(a)(ii), effective July 1,
23 2008. [means the following statutory provisions and administrative regulations or permits

1 ~~issued thereunder, or under more stringent local administrative regulations:~~

2 ~~(a) Section 405 of the Clean Water Act, 33 U.S.C. 1345], as amended];~~

3 ~~(b) The Solid Waste Disposal Act (SWDA), as amended, including Title II, more~~
4 ~~commonly referred to as the Resource Conservation Recovery Act (RCRA), 42 U.S.C.~~
5 ~~6901-6992k [et seq. and administrative regulations contained in any sludge management~~
6 ~~plan prepared pursuant to Subtitle D of SWDA, as amended];~~

7 ~~(c) The Clean Air Act, 42 U.S.C. 7401-7671q [et seq, as amended]; and~~

8 ~~(d) The Toxic Substances Control Act, 15 U.S.C. 2601-2692] [et seq., as amended].~~

9 ~~[(282) "SMCRA" means the Surface Mining Control and Reclamation Act, as amended, 33~~
10 ~~U.S.C. 1201 et seq.]~~

11 ~~(150) "Small concentrated animal feeding operation is defined by 40 C.F.R. 122.23(b)(9),~~
12 ~~effective July 1, 2008 [CFR 122.23(9)].~~

13 ~~(151) [(283)] "Small facility" means a WWTP with an average daily design capacity less than~~
14 ~~10,000 GPD or a sewer line [~~lines~~] of less than 2,500 feet in length including appurtenances.~~

15 ~~[(284) "Small MS4" means a small municipal separate storm sewer system.~~

16 ~~(285) "Small municipal separate storm sewer system" means all municipal separate storm~~
17 ~~sewers that are:~~

18 ~~(a) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to~~
19 ~~subsection (160) or (177) of this section, or designated in 401 KAR 5:060, Section 12(1)(a)5.~~

20 ~~(b) This term includes systems similar to separate storm sewer systems in municipalities, such~~
21 ~~as systems at military bases, large hospital or prison complexes, and highways or other~~
22 ~~thoroughfares. The term does not include separate storm sewers in very discrete areas, such as~~
23 ~~individual buildings.]~~

(152) [(286)] "Small nonpublicly-owned treatment works" means a facility that ~~[which]~~ has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and that ~~[which]~~ is not a POTW.

(153) [(287)] "Small WWTP" means [÷

(a)] A WWTP with an average daily design capacity of less than 10,000 gpd. [÷ or

(b) ~~For coal washing facilities, a WWTP which serves a portable coal processing facility.]~~

(154) [(288)] "Source" means a ~~[any]~~ building, structure, facility, or installation from which there is or may be a discharge of pollutants.

~~[(289) "SPCC" means spill prevention control and countermeasure.~~

~~(290) "Standard" means:~~

~~(a) For purposes of 401 KAR 5:026, 401 KAR 5:029, 401 KAR 5:030 or 401 KAR 5:031, a water quality standard; or~~

~~(b) For purposes of 401 KAR 5:057, a pretreatment standard.]~~

(155) [(291)] "Storm water" **is defined by 40 C.F.R. 122.26(b)(13), effective July 1, 2008.**
[means storm water run-off, snow melt run-off, and surface run-off or [and] drainage.]

(156) [(292)] "Storm water discharge associated with industrial activity" **is defined by 40 C.F.R. 122.26(b)(14), effective July 1, 2008.** ~~[means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in this subsection, the term includes , but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or~~

~~byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and final products; [and] areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, Material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in paragraphs (a) through (k) of this subsection, include those facilities designated under the provisions of 401 KAR 5:060, Section 12(1)(a)5. The following categories of facilities are considered to be engaging in an industrial activity for purposes of this definition:~~

~~(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;~~

~~(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;~~

~~(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral~~

1 ~~industry) including active or inactive mining operations, except for areas of coal mining~~
2 ~~operations that are no longer reclamation areas because the performance bond issued to the~~
3 ~~facility by the appropriate SMCRA authority has been released, or except for areas of noncoal~~
4 ~~mining operations which have been released from applicable state or federal reclamation~~
5 ~~requirements after December 17, 1990, and oil and gas exploration production, processing, or~~
6 ~~treatment operations, or transmission facilities that discharge storm water contaminated by~~
7 ~~contact with or that has come into contact with, any overburden, raw material, intermediate~~
8 ~~products, finished products, by products, or waste products located on the site of these~~
9 ~~operations;~~

10 ~~(d) Hazardous waste treatment, storage, or disposal facilities, including those that are~~
11 ~~operating under interim status or a permit under Subtitle C of RCRA;~~

12 ~~(e) Landfills, land application sites, and open dumps that receive or have received any~~
13 ~~industrial wastes, that is waste that is received from any of the facilities described under this~~
14 ~~subsection, including those that are subject to regulation under Subtitle D of RCRA;~~

15 ~~—(f) Facilities involved in the recycling of materials, including metal scrapyards, battery~~
16 ~~reclaimers, salvage yards, and automobile junkyards including but limited to those classified as~~
17 ~~Standard Industrial Classification 5015 and 5093;~~

18 ~~(g) Steam electric power generating facilities, including coal handling sites;~~

19 ~~(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except~~
20 ~~4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning~~
21 ~~operations, or airport deicing operations. Only those portions of the facility that are either~~
22 ~~involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting,~~
23 ~~fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are~~

1 otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated
2 with industrial activity;

3 ~~(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater~~
4 ~~treatment device or system, used in the storage, treatment, recycling, and reclamation of~~
5 ~~municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that~~
6 ~~are located within the confines of the facility, with a design flow of one and zero tenths (1.0)~~
7 ~~mgd or more, or required to have an approved pretreatment program under 401 KAR 5:057. Not~~
8 ~~included are farm lands, domestic gardens or lands used for sludge management where sludge is~~
9 ~~beneficially reused and which are not physically located in the confines of the facility, or areas~~
10 ~~that are in compliance with Section 405 of the CWA, 33 U.S.C. 1345;~~

11 ~~(j) Construction activity including clearing, grading and excavation, except operations that~~
12 ~~result in the disturbance of less than five (5) acres of total land area. Construction activity also~~
13 ~~includes the disturbance of less than five (5) acres of total land area that is a part of a larger~~
14 ~~common plan of development or sale if the larger common plan will ultimately disturb five (5)~~
15 ~~acres or more;~~

16 ~~(k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27,~~
17 ~~283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, and 4221-25.~~

18 (157) [(293)] "Storm water discharge associated with small construction activity" is defined
19 by 40 C.F.R. 122.26(b)(15), effective July 1, 2008, except that:

20 (a) Waters of the "United States" means waters of the Commonwealth of Kentucky; and

21 (b) "Director" means "cabinet" if "director" refers to the director of an approved state
22 program. [means the discharge of storm water from:

23 ~~(a) Construction activities including clearing, grading, and excavating that result in land~~

~~disturbance of equal to or greater than one (1) acre and less than five (5) acres. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The cabinet may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five (5) acres where:~~

~~1. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five (5) during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997 incorporated by reference in Section 3 of this administrative regulation. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 C.F.R. part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. SW, Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street SW, Washington, DC 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator shall certify to the cabinet that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five (5); or~~

~~2. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small~~

1 ~~construction sites for the pollutant(s) of concern or that determines that these allocations are not~~
2 ~~needed to protect water quality based on consideration of existing in-stream concentrations,~~
3 ~~expected growth in pollutant contributions from all sources, and a margin of safety. For the~~
4 ~~purpose of this subparagraph, the pollutant(s) of concern include sediment or a parameter that~~
5 ~~addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant~~
6 ~~that has been identified as a cause of impairment of any water body that will receive a discharge~~
7 ~~from the construction activity. The operator shall certify to the cabinet that the construction activity~~
8 ~~will take place, and storm water discharges will occur, within the drainage area addressed by the~~
9 ~~TMDL or equivalent analysis.~~

10 ~~(b) Any other construction activity designated by the cabinet or the EPA Regional~~
11 ~~Administrator, based on the potential for contribution to a violation of a water quality standard or~~
12 ~~for significant contribution of pollutants to waters of the commonwealth.~~

13 ~~(294) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.~~

14 ~~(295) "Submission" means, for purposes of 401 KAR 5:057:~~

15 ~~(a) A request by a POTW to the cabinet for approval of a pretreatment program; and~~

16 ~~(b) A request by a POTW to the cabinet for authority to revise the discharge limits in~~
17 ~~categorical pretreatment standards to reflect POTW pollutant removals.]~~

18 ~~(158) [(296)] "Supernatant" means the water that accumulates in the upper portion of a~~
19 ~~lagoon and contains not [nø] greater than two and zero-tenths (2.0) percent total solids by dry~~
20 ~~weight analysis.~~

21 ~~(159) [(297)] "Surface mining operation" means only those facilities required to have a~~
22 ~~permit by 405 KAR Chapters 7 through 26.~~

23 ~~(160) [(298)] "Surface waters" means those waters having well-defined banks and beds,~~

1 either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands;
2 and any subterranean waters flowing in well-defined channels and having a demonstrable
3 hydrologic connection with the surface. ~~[Effluent ditches and]~~ Lagoons used for waste treatment
4 and effluent ditches that ~~[which]~~ are situated on property owned, leased, or under valid easement
5 by a permitted discharger are not considered to be surface waters of the Commonwealth.

6 ~~[(299) "SWDA" means the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 et seq.~~

7 ~~(300) "Tank battery" means an installation where oil is collected from wellheads and is~~
8 ~~separated from produced water.~~

9 ~~(301) "TDS" means total dissolved solids.~~

10 ~~(302) "Thermocline" means the plane in a thermally stratified body of water in which the~~
11 ~~maximum rate of decrease in temperature occurs with respect to depth.~~

12 ~~(303) "TMDL" means total maximum daily load.]~~

13 ~~(161) [(304)] "Total dissolved solids" or "TDS" is defined by 40 C.F.R. 122.2, effective~~
14 ~~July 1, 2008. [means the total dissolved solids (filterable residue) as determined by use of~~
15 ~~the method specified in 40 C.F.R. Part 136.]~~

16 ~~(162) [(305)] "Total maximum daily load" or "TMDL" means a calculation of the maximum~~
17 ~~amount of a pollutant that a waterbody can receive and still meet water quality standards, and an~~
18 ~~allocation of that amount to the pollutant's sources.~~

19 ~~(163) [(306)] "Total suspended solids" or "TSS" means the total suspended solids~~
20 ~~(nonfilterable residue) as determined by use of the method specified in 40 C.F.R. [Part] 136.~~

21 ~~(164) [(307)] "Toxic pollutant" means, as used in 401 KAR 5:060 through [for purposes of~~

22 ~~401 KAR 5:050 to] [401 KAR] 5:080, a [any] pollutant listed as being toxic in 401 KAR 5:080.~~

23 ~~[(308) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic,~~

1 ~~teratogenic, mutagenic, or carcinogenic and causes death, disease, a behavioral abnormality, a~~
2 ~~physiological malfunction, or a physical deformity in an organism or its offspring or interferes with~~
3 ~~normal propagation.~~

4 ~~(309) "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029 and as~~
5 ~~applied to facilities subject to 401 KAR 5:090, a secondary recovery or water flood~~
6 ~~impoundment on which on-site construction commenced before May 19, 1980; owned or~~
7 ~~operated by a person eligible to receive a KPDES permit for a discharge from that impoundment,~~
8 ~~if used for the purpose of diluting produced water, and if the owner or operator received approval~~
9 ~~from the cabinet of its request for designation as such on or before September 4, 1986.~~

10 ~~(310) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge~~
11 ~~or wastewater treatment devices or systems, regardless of ownership, including federal facilities,~~
12 ~~used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage,~~
13 ~~including land dedicated for the disposal of sewage sludge.~~

14 ~~(311) "TSS" means total suspended solids.~~

15 ~~(312) "Twenty five (25) year, twenty four (24) hour rainfall event" means a twenty four (24)~~
16 ~~hour rainfall event with a probable recurrence interval of once in twenty five (25) years, as~~
17 ~~determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April~~
18 ~~30, 1971, Revised July 1, 1979".~~

19 ~~(313) "Twenty four (24) hour composite sample" means not less than twelve (12) effluent~~
20 ~~portions collected at regular intervals over a period of twenty four (24) hours which are~~
21 ~~composited in proportion to flow.]~~

22 (165) "UIC" means Underground Injection Control.

23 ~~[(314) "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation~~

1 or closed, that does not meet the requirements for run-on or run-off controls established pursuant
2 to subtitle D of the Solid Waste Disposal Act, 42 U.S.C. 6901 et seq.]

3 (166) [(315)] "Underground injection control well" means a well used for the emplacement
4 of fluids into the subsurface [injection].

5 (167) [(316)] "Upset" **is defined by 40 C.F.R. 122.41(n), effective July 1, 2008.** [~~means an~~
6 ~~exceptional incident in which there is unintentional and temporary noncompliance with~~
7 ~~categorical pretreatment standards or technology based effluent limitations because of~~
8 ~~factors beyond the reasonable control of the industrial user or permittee and does not~~]. ~~An~~
9 ~~upset shall not~~ include noncompliance to the extent caused by operational error,
10 improperly designed treatment facilities, inadequate treatment facilities, lack of preventive
11 maintenance, or careless or improper operation.]

12 [(317) "U.S.C." means United States Code.

13 (318) "U.S. EPA" means the United States Environmental Protection Agency.]

14 (168) [(319)] "USGS" means the U.S. [United States] Geological Survey.

15 (169) [(320)] "Variance" means a a [any] mechanism or provision pursuant to 401 KAR
16 Chapter 5 that [~~under the KPDES administrative regulations which~~] allows modification to or
17 waiver of the generally applicable effluent limitation requirements or time deadlines.

18 [(321) "WAH" means warm water aquatic habitat.

19 (322) ~~"Warm water aquatic habitat" or "WAH" means any surface water and associated~~
20 ~~substrate capable of supporting indigenous warm water aquatic life.~~]

21 (170) [(323)] "Wastewater system" means a sewage system as defined in KRS 224.01-
22 010(25).

23 (171) [(324)] "Wastewater treatment plant" or "WWTP" means a facility used for the

1 treatment and disposal of sewage.

2 (172) "Water" or "Waters of the Commonwealth" is defined by KRS 224.01-010(33).

3 (173) [(325)] "Water quality management plan" or "WQM plan" means:

4 (a) A plan consisting of initial plans produced in accordance with [~~Sections 208 and 303(e)~~
5 ~~of the CWA,~~] 33 U.S.C. 1288 and 1313 and certified and approved updates to those plans; or

6 (b) A state or areawide waste treatment management plan developed and updated in
7 accordance with [~~Sections 201, 205(j), 208, and 303(e) of the CWA,~~] 33 U.S.C. 1281, 1285j,
8 1288, and 1313e and 40 C.F.R. Part 130.

9 (174) [(324)] "Water quality standard" means an administrative regulation promulgated by
10 the cabinet establishing the designated use of a surface water and the water quality criteria
11 necessary to maintain and protect that designated use.

12 (175) [(327)] "Well" or "water well" means:

13 (a) For [~~purposes of~~] 401 KAR 5:005, as defined by KRS 223.400(7). [~~any excavation or~~
14 ~~opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or~~
15 ~~otherwise constructed if the actual or intended use in whole or in part of an excavation is the~~
16 ~~removal of water for any purpose, including but not limited to culinary household purposes,~~
17 ~~animal consumption, food manufacture, use of geothermal resources for domestic heating~~
18 ~~purposes, and industrial, irrigation, and dewatering purposes;~~

19 (b) For purposes of 401 KAR 5:050 to 401 KAR 5:080, ~~A bored, drilled, or driven shaft, or a~~
20 ~~dug hole, whose depth is greater than the largest surface dimension; or~~

21 (c) For purposes of 401 KAR 5:090, ~~a borehole drilled, or proposed to be drilled for the~~
22 ~~purpose of producing gas or oil or one (1) through which gas or oil is being produced, or a~~
23 ~~borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced~~

1 ~~water, or other fluid therein or one (1) into which any water, gas, produced water, or other fluid~~
2 ~~is being injected.]~~

3 ~~(176) [(328)] "Wellhead protection area" means:~~

4 ~~(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying~~
5 ~~a public water system, through which pollutants are reasonably likely to move toward and reach~~
6 ~~the water well, well field, or spring; or~~

7 ~~(b) An area defined as a wellhead protection area in a county water supply plan.~~

8 ~~[(329) "Well injection" means the subsurface emplacement of fluids through a bored, drilled~~
9 ~~or driven well; or through a dug well, where the depth of the dug well is greater than the largest~~
10 ~~surface dimension.]~~

11 ~~(177) [(330)] "Wetlands" is defined by 40 C.F.R. 122.2, effective July 1, 2008. [means~~
12 ~~land that has a predominance of hydric soils and that is inundated or saturated by surface~~
13 ~~or groundwater at a frequency and duration sufficient to support, and that under normal~~
14 ~~circumstances does support, a prevalence of hydrophytic vegetation typically adapted for~~
15 ~~life in saturated soil conditions.]~~

16 ~~[(331) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured~~
17 ~~directly by a toxicity test.~~

18 ~~(332) "WWTP" means wastewater treatment plant.]~~

19 ~~(333) "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.~~

20 ~~(334) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or~~
21 ~~downstream from a discharge location where rapid, first stage mixing occurs. The zone of initial~~
22 ~~dilution is the domain where wastewater and receiving water initially mix.~~

23 ~~(335) "Zone of saturation" means the zone in which all the subsurface voids in the rock or~~

1 soil are filled with water.

2 (336) ~~"100-year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall~~
3 ~~event with a probable recurrence interval of once in 100 years, as determined by "Rainfall~~
4 ~~Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1,~~
5 ~~1979", incorporated by reference in Section 3 of this administrative regulation.~~

6 ~~Section 2. Federal Regulations Adopted Without Change. The following federal regulations~~
7 ~~govern the subject matter of this administrative regulation and are hereby adopted without change.~~
8 ~~The federal regulations are available for inspection and copying, subject to applicable copyright~~
9 ~~law, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at~~
10 ~~the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S.~~
11 ~~Superintendent of Documents, Washington, D.C.~~

12 ~~(1) 40 C.F.R. Part 116, "Designation of Hazardous Substances", July 1, 2001, U.S.~~
13 ~~Environmental Protection Agency, U.S. Government Printing Office, Superintendent of~~
14 ~~Documents, Mail Stop: SSOP, Washington, DC 20402-9328;~~

15 ~~(2) 40 C.F.R. Part 136, "Guidelines Establishing Test Procedures for the Analysis of~~
16 ~~Pollutants", July 1, 2002, U.S. Environmental Protection Agency, U.S. Government Printing~~
17 ~~Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328;~~

18 ~~(3) 40 C.F.R. Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and~~
19 ~~Standards", July 2001, U.S. Environmental Protection Agency, U.S. Government Printing Office,~~
20 ~~Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and~~

21 ~~(4) 40 C.F.R. Part 130, "Water Quality Planning and Management," July 2001, U.S.~~
22 ~~Environmental Protection Agency, U.S. Government Printing Office, Superintendent of~~
23 ~~Documents, Mail Stop: SSOP, Washington, DC 20402-9328.~~

Section 3.] Incorporation by Reference. (1) ~~[The following material is incorporated by reference:~~

(a) ~~"Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971; Revised June 1, 1979"; Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, Bureau of Natural Resources, Division of Water Resources;~~

(b) ~~"Combined Sewer Overflow Control Policy", 59 Fed. Reg. 18688, April 19, 1994, is incorporated by reference. [; and~~

(c) ~~"Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE)", Page 21-64, January 1997, U.S. Department of Agriculture.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 200 Fair Oaks Lane ~~[14 Reilly Road]~~, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

401 KAR 5:002 “Definitions for 401 KAR Chapter 5” (Amended After Comments) approved for promulgation:

Date

Henry “Hank” List, Deputy Secretary, FOR
Leonard K. Peters, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:002

Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation establishes the definitions used in 401 KAR Chapter 5.
- (b) The necessity of this administrative regulation:** This regulation is necessary to provide clarity to terms that have special meaning in Chapter 5. The majority of these terms relate to regulations developed under the Clean Water Act. Kentucky is an NPDES delegated state. All NPDES delegated states must have compatible state regulations.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. 401 KAR Chapter 5 establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This regulation provides definitions for terms used in Chapter 5.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This regulation provides definitions relevant to the control of water pollution.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** This amendment will correct and update the regulation to make the definitions consistent with the corresponding federal regulations and recent court decisions. This amendment revises ambiguous terms in accordance with KRS 13A. The proposed amendment removes definitions that do not occur in 401 KAR Chapter 5. Amendments after comment corrected drafting errors to comply with KRS 13A and provided citations to federal definitions, where possible.
- (b) The necessity of the amendment to this administrative regulation:** It is necessary to amend this administrative regulation to achieve compliance with federal regulations. If the regulation is not amended as proposed, the state regulation will be inconsistent with the corresponding federal regulations.
- (c) How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-100 requires the cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution.
- (d) How the amendment will assist in the effective administration of the statutes:** The amendment removes discrepancies between current state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. After analysis of the current types of permits, the regulation is expected to

impact the following number of entities:

- a. Individuals: Approximately 170 per year through construction permits for individual family residences and approximately 400 per year through permit re-issuances.
- b. Businesses: 1600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and storm water coverage issuances.
- c. Organizations: 100 per year, primarily through individual sanitary permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs.
- d. State or Local Government: Approximately 200 per year, primarily through construction permits for sewer line extensions. The construction permit requirements for new or expanded treatment facilities affect approximately 20 of these. Approximately 30 require a KPDES discharge permit re-issuance each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** The regulated entities will use the definitions to interpret the requirements of regulations in 401 KAR Chapter 5.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Under this amendment, individuals, businesses, and organizations are not expected to experience any additional cost.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and updated federal regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially:** There will be no cost.
- (b) On a continuing basis:** There will be no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment requires no additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly affect fees.

(9) TIERING: Is tiering applied? (Explain why or why not) To the extent that corresponding federal regulations provide for tiering, these amendments are tiered.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 5:002

Contact Person: Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This regulation affects wastewater treatment systems and facilities that discharge pollutants to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit, a KNDOP permit, or a KISOP permit.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

The Clean Water Act and KRS 224

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 5:002

Contact Person: Peter T. Goodman, Assistant Director

1. Federal statute or regulation constituting the federal mandate.

40 CFR 122 and 33 U.S.C. 1251-1387.

2. State compliance standards.

KRS 224.10-100

3. Minimum or uniform standards contained in the federal mandate.

The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, 33 U.S.C. 1251-1387.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.